

did, and that is the paper to which he referred which was published in 1947.

Since this had been the subject of wide publicity before, and the efforts to change it which had been proposed by such eminent authorities as Judge Markell, Chief Judge Dennis and Judge Chesnut from the federal bench, all unavailing, my approach was not to attack or make a frontal attack on the amendment, which I would have preferred to do, but accepting the amendment to point out the many features which probably would render all our criminal decisions unconstitutional under the Fourteenth Amendment. I proposed in my paper therefore that there be four different modifications. One involved the amendment of the Constitution to permit the passing on the sufficiency of the evidence by the trial court and opening the case to appeal.

The second one was a mandatory rule of court requiring the trial courts to give advisory instructions on the law to the jury so that that was absolutely mandatory on his part and opening those instructions to review on appeal.

DELEGATE JAMES (presiding): Thirty seconds, Delegate Henderson.

DELEGATE HENDERSON: There were several other matters which were accomplished there. For one thing, the rules of court were amended to provide that this did not apply as it had before to a judge who was sitting without a jury. In those ways we managed to close some of the avenues so that the Supreme Court, even though it had the appeal on certiorari, refused to grant a hearing and has not yet ruled on it.

I fully agree with Delegate Moser that the time has come that this outmoded thing which has outlived its usefulness and still presents an element of constitutionality under the Fourteenth Amendment should be deleted.

DELEGATE JAMES (presiding): For what purpose does Delegate Bothe rise?

DELEGATE BOTHE: My purpose was to ask questions of Delegate Willoner at such time as that is appropriate.

DELEGATE JAMES (presiding): I believe this is a time for debate and a time for questioning will come later.

Delegate Sollins, do you wish to speak against the amendment?

DELEGATE SOLLINS: I have a question of Delegate Moser.

DELEGATE JAMES (presiding): First I want to recognize the people who wish to speak for and against, and then we will have a question period.

Does anyone wish to speak against?

DELEGATE BOTHE: The answers to questions which I and perhaps other delegates may wish to pose may bear on the nature of the debate.

DELEGATE JAMES (presiding): Let me recognize Delegate Dorsey and then we will have the questions.

DELEGATE DORSEY: Mr. President and ladies and gentlemen of the Convention, for one hundred years this provision has been in the Constitution of Maryland and in the administration of criminal justice in this state. It has worked well. I have sat on both sides of the counsel table as state's attorney and as defense counsel, and I have never observed any miscarriage of justice because a jury was the judge of both the law and the fact.

For the last fifty years there have been attempts made to take this provision out of the Constitution of Maryland. All of those attempts have failed. It was amended so that the courts could pass on the sufficiency of the evidence. I feel that that is a good provision. I have said for one hundred years it has worked in this State, so why change for the sake of change.

I hope, ladies, and gentlemen, that this amendment will fail.

DELEGATE JAMES (presiding): Delegate Bothe, do you wish to ask a question of Delegate Moser?

DELEGATE BOTHE: Delegate Willoner.

DELEGATE JAMES (presiding): Delegate Willoner, do you wish to yield?

DELEGATE WILLONER: I am always glad to yield to a young lady.

DELEGATE JAMES (presiding): Delegate Bothe.

DELEGATE BOTHE: I might point out, Mr. Chairman, that I do not believe this provision was very thoroughly presented when the Committee's Recommendation came before the Committee of the Whole, and for that reason, I would like an opportunity perhaps to ask more questions than would otherwise be appropriate.

DELEGATE JAMES (presiding): Are you asking Delegate Willoner a question?